

I-8-1(78)
Border Patrol Inspection Facility
SD-57-81 (LH)

INTERGOVERNMENTAL AGREEMENT
BETWEEN
THE STATE OF ARIZONA
AND
THE UNITED STATES DEPARTMENT OF JUSTICE

PARTIES

THIS AGREEMENT, entered into this 1st day of September, 1981, by and between the STATE OF ARIZONA, by and through the ARIZONA DEPARTMENT OF TRANSPORTATION (the "State"), and the UNITED STATES DEPARTMENT OF JUSTICE, by and through the IMMIGRATION AND NATURALIZATION SERVICE (the "Department").

STATUTORY AUTHORIZATION

WHEREAS, the State is empowered by Arizona Revised Statutes Section 28-114 to enter into this agreement; and
and Section 28-2201

PURPOSE

WHEREAS, the Department desires to construct a Border Patrol Inspection Facility within the Interstate Highway 8 (Yuma-Casa Grande Highway) right of way; and

WHEREAS, the State has agreed to modify Interstate Highway 8 so as to include the area of the Inspection Facility within the highway right of way.

NOW, THEREFORE, in consideration of the mutual covenants hereinafter to be kept by all parties, it is mutually agreed as follows:

METHOD

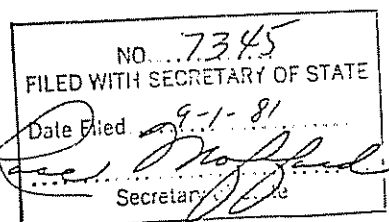
The State shall:

1. Submit a project for modifying Interstate Highway 8 to accommodate the Inspection Facility, together with its recommendation for approval, to the Federal Highway Administration (F.H.W.A.) for construction with funds allocated to the State under the Federal Highway Surface Transportation Assistance Act. In the event the project is not approved by F.H.W.A., this agreement shall be cancelled.

2. Develop construction plans for all work necessary to construct roadway ramps, acceleration and deceleration lanes, and parking facilities, including drainage, signing and lighting features (the "Highway Project").

3. Perform all right of way services including, but not limited to the following:

- a. obtaining title reports on all parcels to be acquired;
- b. developing right of way plans; and



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c. using its right of way agents to acquire the necessary parcels.

4. Solicit bids and award a contract, subject to the concurrence of the Department, for the Highway Project.

5. Be responsible for bringing electrical service to the site of the Inspection Facility.

6. Bear the cost of performing the work outlined above to the extent not covered by F.H.W.A. funding.

7. Submit all plans and specifications to the Chief of the Facilities and Engineering Branch, Immigration and Naturalization Service, for review and approval prior to proceeding with any construction.

8. Upon acquisition of the necessary rights of way, enter into a lease agreement with the Department for the purposes of operating and maintaining a Border Patrol Inspection Facility.

9. Upon completion of the Highway Project, bill the Department for its share of the costs.

10. Upon completion of construction, bear the cost of maintaining the roadway ramps, acceleration lanes and deceleration lanes.

The Department shall:

1. To the extent not covered by F.H.W.A. funding, bear the costs of the necessary rights of way, not to exceed \$1,100.00.

2. To the extent not covered by F.H.W.A. funding, bear the costs of constructing, supervising and administering the Highway Project, not to exceed \$43,000.00, except it is understood that the Department shall bear the full cost of installing any electric and telephone services on the Inspection Facility site. Should costs exceed preliminary estimates as quoted in this agreement, the Department shall be promptly notified to ensure expenditures do not exceed available funding limitations. If so, the Department reserves the right to prioritize and to cancel project or portions of project in excess thereof. The State shall be indemnified for all expenditures on the project already completed.

3. Review all plans and specifications. The Department shall have sixty (60) days from receipt of any plans and specifications to notify the State in writing that it contests any item thereon. Failure of the Department to give such written notification within said period shall be deemed to be an approval of such items.

4. Indemnify and save the State and its agents or employees harmless from any and all claims, actions, suits or judgments that may be made against the State or its officials by reason of: (1) the acquisition of, or failure to acquire, rights of way and (2) the planning and construction or supervision of construction of the Highway Project, including ditches, fills, traffic controls, rights of ingress and egress, or any other act or failure to act on the part of the State or its officials. This agreement shall in no way inure to the benefit of the person, partnership, or corporation who contracts with the State and fails to carry out the terms and plans of the contract. In the event that both parties are negligent, each party shall have the right of contribution against the other.

5. Upon completion of construction, provide for at its own cost and as an annual item in its budget, proper maintenance of the parking facilities.

GENERAL CONDITIONS

No member of or delegate to Congress, shall be admitted to any share or part of this contract or to any benefit that may arise herefrom, but this restriction shall not be construed to extend to this contract if made with a corporation or company for its general benefit.

DURATION AND TERMINATION

THIS AGREEMENT except the provisions herein for maintenance, which shall be perpetual, shall terminate upon completion of the work herein embraced in accordance with the terms of this agreement or may be terminated at any time prior to the awarding of the construction contract by either party upon thirty (30) days written notice of that intent. All parties are hereby put on notice that this agreement is subject to cancellation by the Governor of Arizona, pursuant to Arizona Revised Statutes Section 38-511. The obligations of State under the terms of this agreement are subject to the allocation of funds and resources by the Legislature and the Arizona Transportation Board.

FILING WITH SECRETARY OF STATE

THIS AGREEMENT shall be filed with the Arizona Secretary of State and shall become effective upon filing.

AUTHORIZING RESOLUTION AND APPROVAL BY LEGAL COUNSEL

Attached hereto as Exhibits "A" and "B", respectively, are authenticated copies of the resolution of the Director of the Department of Transportation authorizing the Arizona Department of Transportation to enter into this agreement and the resolution of the Regional Commissioner, Western Region, of the Immigration and Naturalization Service authorizing the Immigration and Naturalization Service to enter into this agreement.

IN WITNESS WHEREOF, the parties have executed this agreement the day and year first above written.

IMMIGRATION AND NATURALIZATION
SERVICE

By: R. J. McLATCHER 7-30-81

R. J. McLATCHER, ASSISTANT REGIONAL
COMMISSIONER, PROP. MGMT. & PROC.
Western Region

ARIZONA DEPARTMENT OF
TRANSPORTATION


By: W. A. Ordway
W. A. ORDWAY, Director

Exhibit "A"

RESOLUTION

BE IT RESOLVED on this 27th day of October, 1930, that I, W. A. Ordway, Director of the Arizona Department of Transportation, have determined that it is in the best interests of the State of Arizona for the Arizona Department of Transportation, by and through its Highways Division, to enter into an intergovernmental agreement with the U.S. Department of Justice for the construction of a Border Patrol Inspection Facility adjacent to Interstate Highway 8 (YUMA-CASA GRANDE HIGHWAY).

THEREFORE, authorization is hereby given to draft said agreement which, upon completion, shall be returned for approval and execution.


W. A. Ordway, Director
Arizona Department of
Transportation

DEPARTMENT OF JUSTICE
IMMIGRATION & NATURALIZATION SERVICE
WESTERN REGIONAL OFFICE
SAN PEDRO (TERMINAL ISLAND), CA 90731

51.81

FINDINGS AND DETERMINATIONS UNDER SECTION 1.3.310 OF THE FEDERAL PROPERTY AND
ADMINISTRATIVE SERVICES ACT OF 1949

FINDINGS

1. A new Highway I-8 is being constructed in the State of Arizona.
2. The U.S. Border Patrol currently operates a traffic checkpoint to prevent transportation of undocumented aliens inland. This station is to be moved to a permanent location at Mile Post 17 with adequate provisions on the new highway to provide for special lanes, parking facilities and inspection facilities while new road construction is in process. This Site falls within the guidelines set forth in U. S. vs Martinez-Fuerte in that:
 - A. The checkpoint is of a permanent nature.
 - B. All traffic is diverted through the checkpoint during its hours of operation, just as all traffic would be channeled through the port of entry at the border.
 - C. Interstate 8 parallels the border for the entire distance from the two closest ports of entry (San Luis, Arizona and Andrade, California) at distances varying from two to thirty-five miles.
 - D. There are numerous roads, trails and paths that lead from the border to Interstate 8 which do not pass through a port of entry.
3. The Federal Highway Administration is providing 94.31% or approximately \$816,000. INS will contribute \$44,100.
4. The State of Arizona shall supervise complete construction, including right-of-way acquisition.
5. Failure to participate in this construction at this time will preclude establishment of an adequate traffic check for the U.S. Government in this area.
6. Health and Safety problems have been presented and overcome by INS officials at Yuma, Arizona.
7. Prices to be paid will be reasonable and will be arrived through formal competitive measures.
8. Central Office has provided funding and has directed that we enter into this agreement.

Exhibit "B"

DETERMINATIONS

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1. Based upon the foregoing findings, I hereby determine, within the meaning of 1.3.310 of the Federal Property & Administrative Services Act of 1949 that:

A. Past experience has proven that a checkpoint on Interstate 8 east of Yuma is necessary, if an overall viable traffic check operation is to be maintained within the Yuma Sector area. Whenever checkpoints are operated on Highways 78 and 95, northbound from the Yuma area, efficiency drops within a matter of hours, as smugglers reroute and utilize Interstate 8 east to reach their interior destination.


B. It is necessary to enter into an Intergovernmental agreement with the State of Arizona to fund and proceed with construction of this project within the limits established.

C. Since work will be performed with FHWA funds, all contract clauses required by that Agency will be complied with by the State of Arizona.

D. Central Office has directed we enter into and sign this agreement.

E. Draft agreements have been reviewed by COCAP, COENG, COBOR, COCOU and ROCOM.

2. Based upon these Findings and Determinations, I hereby authorize the signing of this agreement.


Ed O'Connor
Regional Commissioner

7-8-81

*aff. [unclear]
Paul [unclear]*

UNITED STATES DEPARTMENT OF JUSTICE
IMMIGRATION AND NATURALIZATION SERVICE
WESTERN REGION
SAN PEDRO, CALIFORNIA 90731

August 26, 1981

PLEASE REFER TO THIS FILE NO
WR 7135/59-I-8

Arizona Department of Transportation
Highways Division
ATTN: James P. Oxley
205 South 17th Avenue
Mail Stop 330E
Phoenix, Arizona 85007

Dear Mr. Oxley: *gpe*

Re: Border Patrol Inspection
Facility on I-8-1 (78)

In accordance with our conversation with Cheryl Machac of your office on the proposed Border Patrol Inspection Facility on I-8, be advised that the Intergovernmental Agreement has been reviewed by this Service's General Counsel and is considered proper in form. Also, it is within the power and authority of this agency to enter into this agreement.

Sincerely yours,

William B. Odencrantz
William B. Odencrantz
Regional Counsel

RECEIVED

AUG 27 1981

REGIONAL COUNSEL



OFFICE OF THE
Attorney General
1801 WEST JEFFERSON STREET
FOURTH FLOOR
PHOENIX, ARIZONA 85007

ROBERT K. CORBIN
ATTORNEY GENERAL

INTERGOVERNMENTAL AGREEMENT

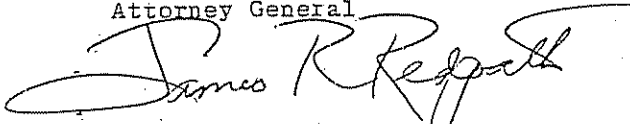
DETERMINATION

A. G. Contract No. 21-454, which is an agreement between public agencies, has been reviewed pursuant to A.R.S. § 11-952, as amended, by the undersigned Assistant Attorney General who has determined that it is in proper form and is within the powers and authority granted to the State or its agencies under the laws of the State of Arizona.

No opinion is expressed as to the authority of the remaining parties, other than the State or its agencies, to enter into said agreement.

DATED this 27th day of August, 1981.

ROBERT K. CORBIN
Attorney General


Assistant Attorney General
Transportation Division